

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

STEVEN DONZIGER,

Defendant.

No. 19-CR-561 (LAP)

No. 11-CV-691 (LAK)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Before the Court are Mr. Donziger's letters dated August 12 and August 13, 2021, seeking a variety of discovery related to the Special Prosecutors' use of Federal Bureau of Investigation agents. (See dkt. nos. 356 & 357.) Without accepting or rejecting the propositions and conclusions in Mr. Donziger's letters, the requests for discovery are DENIED.

Like many of Mr. Donziger's requests for discovery before this one, he identifies no legal rule applicable in criminal cases authorizing him to obtain the discovery he seeks. As the Court has reminded Mr. Donziger numerous times throughout the course of this case, he "is only entitled to disclosure of statements expressly authorized by Rule 16 or otherwise discoverable as exculpatory under Brady, or as impeaching under 18 U.S.C. § 3500." United States v. Souza, No. 06-CR-806 (SLT), 2008 WL 753736, at *2 (E.D.N.Y. Mar. 19, 2008). Mr. Donziger does not explain how his current batch of requests fits within that framework.

Moreover, Mr. Donziger's requests are targeted at identifying what supervision the Department of Justice actually exercised over the Special Prosecutors, i.e., specific decisions by the Department in regard to requests to deploy and utilize FBI agents. (See dkt. nos. 356 & 357 at 1-2.) That ignores, however, that in the Appointments Clause context "what matters is that [a superior officer] have the discretion to review decisions" by the inferior officer, not that the superior officer, in fact, exercised that discretion. United States v. Arthrex, Inc., 141 S. Ct. 1970, 1988 (2021) (emphasis added). In that sense, even if Mr. Donziger were entitled to this discovery--to be clear, he is not--it would not help him establish his Appointments Clause challenge anyway.

For these reasons, Mr. Donziger's motions for discovery [dk. nos. 356 & 357] are DENIED. The Clerk of the Court shall close the open motions. Mr. Donziger is reminded that any reply in support of his motion for a new trial shall be filed no later than August 21, 2021.

SO ORDERED.

Dated: August 16, 2021
New York, New York



LORETTA A. PRESKA
Senior United States District Judge